



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Mutual Protective Bureau--
Reconsideration
File: B-227875.2

Date: November 4, 1987

DIGEST

1. Request for reconsideration is denied where protester does not show any error in fact or law of prior decision.
2. Protest allegation first raised in request for reconsideration is untimely where protest basis was known to the protester several months prior to filing its request for reconsideration.

DECISION

American Mutual Protective Bureau (AMPB) requests that we reconsider our decision in American Mutual Protective Bureau, B-227875, Sept. 17, 1987, 66 Comp. Gen. ___, 87-2 C.P.D. ¶ ___. We denied AMPB's protest that the Small Business Administration (SBA) failed to conduct a proper study of the impact of an award of a section 8(a) sub-contract for security guard services for the Oakland Army Base (OAB) on AMPB, the incumbent small business contractor for these services.

AMPB had argued that SBA failed to comply with its own regulations by not finding adverse impact. In this regard, SBA regulations provide that SBA will presume adverse impact and not accept a procurement for the 8(a) program where a small business has been the recipient of two or more consecutive awards for the services within the last 24 months and the estimated dollar value of the award would be 25 percent or more of its most recent annual gross sales. 13 C.F.R. § 124.301(b)(8)(iv)(B) (1987). AMPB had alleged that it had been awarded two consecutive contracts for the guard services within the past 24 months and that the estimated dollar impact of the proposed OAB award exceeded 25 percent of its most recent annual gross sales.

We found that SBA conducted a proper impact study and issued its decision of "no adverse impact" consistent with its findings. Since AMPB did not provide SBA with current financial statements, SBA did not have current verifiable sales information upon which the agency could make a

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reliable determination under the 25 percent rule in 13 C.F.R. § 124.301(b)(8)(iv)(B). We found that SBA did not abuse its discretion by basing its impact determination on the best information available to it, which included the financial position of the protester as well as sales information (much of which was not current) that was provided.

The protester states that its request for reconsideration is based on "additional information provided and errors in law." However, AMPB in its reconsideration request merely reiterates the arguments raised in its original protest. For instance, AMPB argues on reconsideration, as it argued in its initial protest, that SBA improperly failed to wait until the protester could provide the agency with year end financial statements before issuing its impact determination. (AMPB provided SBA with current financial statements only after SBA issued its finding of no adverse impact.) The protester also reiterates its argument that it provided SBA with reliable sales information at that agency's request--that is, the firm did not withhold sales information from SBA. Further, the protester restates its belief that the SBA decision to accept the OAB requirement in the 8(a) program was the product of significant political influence.

We addressed these arguments in our original decision. With respect to AMPB's contention that SBA should have waited until after the end of AMPB's fiscal year for a current year end financial statement, we pointed out that SBA did not require year end financial statements and advised the protester that interim financial statements would suffice. The record showed that the SBA extended deadlines for AMPB to provide this information, and in fact, over a period of almost 4 months, repeatedly requested this information from the protester. However, the protester in response to such requests merely wrote SBA a letter (unsupported by financial statements) stating that the OAB contract amounted to 34.61 percent of its total billings for the current year.

Further, while the protester argued it provided SBA with current verifiable sales information, including information on current billings and recently awarded contracts, the record indicated that when SBA sought verification of billing information provided by the protester on its more recent OAB contract, it learned that procuring agency disbursements were several hundred thousand dollars less than AMPB reported. Also, while AMPB disputed SBA's statement that the firm failed to advise the agency of another recently awarded contract, the record shows that the protester in its initial response to SBA's request for such information did not advise SBA of the award and apparently

only advised SBA of the award after the agency had verified the award with the procuring agency.

While the protester continues to allege that the decision to accept the requirement in the 8(a) program was the result of improper political influence, it offers no proof or evidence supporting this allegation.

The protester again argues that the Army, prior to restricting the OAB requirement to an 8(a) firm, failed to comply with the provisions of the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 19.501(g) and 19.506(a) (1986), governing the withdrawal of contracts from the small business set-aside program. As we explained in our prior decision, the section 8(a) subcontracting program is a noncompetitive procedure established by statute, and the contracting agencies' broad discretion to determine the appropriateness of an 8(a) award is not limited by regulations on small business set aside procurements. IBI Security Service, Inc., B-228056, Sept. 2, 1987, 87-2 C.P.D.

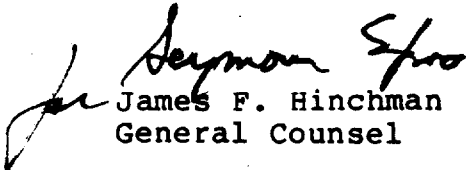
Our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1987), require that a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of a decision is deemed warranted and must specify any error of law in the decision or information not previously considered. Information not previously considered refers to information which was overlooked by our Office or information to which the protester did not have access when the initial protest was pending. Federal Sales Services, Inc.--Request for Reconsideration, B-222798.3, July 23, 1986, 86-2 C.P.D. ¶ 99. While it is clear that AMPB disagrees with our disposition of its protest, it has not provided any new facts or legal arguments which were not previously considered low AMPB has merely reargued the issues considered in our prior decision. Federal Sales Services, Inc.--Request for Reconsideration, B-222798.3, supra.

Finally, AMPB argues that the SBA improperly failed to indicate in its impact report that accepting the OAB requirement in the 8(a) program would not adversely affect "other small business programs" in addition to individual small business concerns such as AMPB. The protester argues that under SBA regulations, SBA was required to make such a finding. See 13 C.F.R. § 124.301(b)(8)(iv)(A).

This argument raised for the first time in AMPB's request for reconsideration is untimely. Our regulations at

4 C.F.R. § 21.2(a)(2) require that protests be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. Here, AMPB alleges that SBA, prior to accepting the OAB requirement in the 8(a) program, improperly failed to include in its impact study a determination of "no adverse impact" on the small business programs in the local area. At the latest, in August 1987 the protester received a copy of SBA's impact determination in SBA's report on AMPB's initial protest. Thus, if AMPB believed that the SBA impact determination improperly failed to include certain findings, it should have protested this within 10 working days of receipt of the impact determination; its protest concerning this matter raised for the first time in the firm's October 9, 1987, request for reconsideration is untimely. In this regard, our Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protests, where, as here, this protest ground was known to the protester several months before it was raised. Beech Aerospace Services, Inc., B-220078, Dec. 20, 1985, 85-2 C.P.D. ¶ 394.

The request for reconsideration is denied.


James F. Hinchman
General Counsel